Supreme Court of Michigan.

WILLIAM WEAVER *v.* THE PEOPLE.

A judge has power to suspend sentence, where the circumstances, in his opinion, render the offence trifling and the law has imposed no minimum punishment for it.

In general, where a sentence has been omitted by the judge who tried the case, another judge may impose the proper sentence at a subsequent time.

But where sentence has been suspended by a judge under circumstances that indicate his opinion that no punishment should be inflicted, as, *e. g.*, where he has discharged the prisoner on his own recognisance in a nominal amount, a subsequent sentence by a different judge is erroneous and will be reversed.

ERROR to Van Buren Circuit.

Weaver, on the 8th day of July 1874, pleaded guilty to a charge of malicious injury to a dwelling. The case was pending in the Circuit Court for the county of Van Buren, and the plea was put in before Hon. J. W. STONE, Circuit Judge. On the same day Judge STONE suspended sentence until the first day of the next term, which was the first Monday of October 1874, the respondent being allowed to give his own recognisance to appear at that day, in the sum of one hundred dollars. The sentence was not further suspended, nor the recognisance forfeited, and the defendant was not called up for sentence at the return term, but continued at liberty. On the 25th day of October 1875, Judge TENNANT, a judge of another circuit sitting temporarily, sentenced Weaver to two years and six months imprisonment in the state prison. On this error is brought.

W. Scott Beebe, for plaintiff in error.

Andrew J. Smith, Attorney-General, for the People.

The opinion of the court was delivered by

CAMPBELL, J.—It is not necessary in this case to discuss the power of a different judge to give sentence where it has been omitted, and where it does not appear that such omission was designed to interfere with punishment. There has been some dispute as to the best course to pursue under such circumstances. Lord HALE, not considering the abstract question, said it was not his custom to give such sentences in cases of felony. But generally the question seems to become important in view of some action or expression of the trial judge indicating his sentiments.

It is said with much force that inasmuch as there can be no sentence without the joint belief of the jury in the prisoner's guilt, and of the judge in the deserts of the offender, where he has any discretion to exercise, the views of the judge are to be respected.

In the present case there was no fixed penalty. It might be imprisonment in the state prison, or it might be a short imprisonment in the county jail, or a fine not exceeding five hundred dollars, but with no minimum amount required to be imposed. In other words, it was recognised by the legislature that such offences might be of trifling enormity, and not worthy of serious notice.

Sentences may be suspended for various purposes. It may be for the purpose of allowing steps to be taken for a new trial or other relief, or it may be with a view of letting the offender go without punishment. The release of a defendant on his own recognisance and without sureties, in a merely nominal amount, signifies usually the latter purpose. It at least is a plain assertion of the judge that he did not regard the offence as one that should receive a serious punishment. The failure to take steps during the October Term of 1874, was a practical abandonment of the prosecution, and corroborates the opinion that such must have been understood as the object of the suspension, and as the record stands it is fairly to be inferred it was intentional. To sentence a prisoner to the penitentiary under such circumstances, and when the trial judge has distinctly said he ought not to be so sentenced, is not supplying his omissions, but is overruling his decision. This we think is not admissible, and the sentence was unauthorized, and the judgment must be reversed, and the prisoner discharged.

Court of Appeals of New York.

WILLIAM LEETCH, RESPONDENT, *v.* ATLANTIC MUTUAL INSURANCE CO., APPELLANT.

In all contracts of marine insurance there are certain implied conditions which are of the same force as if written in the policy, and are distinguishable from mere representations.

Among these conditions, in case of an insurance on cargo, is that it shall be stowed in a safe and proper manner and in the usual and customary place for the carriage of goods of the kind insured. Any breach of this condition by which the risk is varied and the perils increased avoids the policy.